

## Part 11

### County Option Sales and Use Tax

#### **59-12-1101 Statewide purpose.**

The Legislature finds that a statewide purpose is served by this part in that it enables counties to carry out more effectively the counties' statutorily defined roles as political and legal subdivisions of the state by improving the counties' revenue raising capacities.

Enacted by Chapter 228, 1997 General Session

#### **59-12-1102 Base -- Rate -- Imposition of tax -- Distribution of revenue -- Administration -- Administrative charge -- Commission requirement to retain an amount to be deposited into the Qualified Emergency Food Agencies Fund -- Enactment or repeal of tax -- Effective date -- Notice requirements.**

- (1)
- (a)
- (i) Subject to Subsections (2) through (6), and in addition to any other tax authorized by this chapter, a county may impose by ordinance a county option sales and use tax of .25% upon the transactions described in Subsection 59-12-103(1).
  - (ii) Notwithstanding Subsection (1)(a)(i), a county may not impose a tax under this section on the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104.
- (b) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.
- (c) The county option sales and use tax under this section shall be imposed:
- (i) upon transactions that are located within the county, including transactions that are located within municipalities in the county; and
  - (ii) except as provided in Subsection (1)(d) or (5), beginning on the first day of January:
    - (A) of the next calendar year after adoption of the ordinance imposing the tax if the ordinance is adopted on or before May 25; or
    - (B) of the second calendar year after adoption of the ordinance imposing the tax if the ordinance is adopted after May 25.
- (d) The county option sales and use tax under this section shall be imposed:
- (i) beginning January 1, 1998, if an ordinance adopting the tax imposed on or before September 4, 1997; or
  - (ii) beginning January 1, 1999, if an ordinance adopting the tax is imposed during 1997 but after September 4, 1997.
- (2)
- (a) Before imposing a county option sales and use tax under Subsection (1), a county shall hold two public hearings on separate days in geographically diverse locations in the county.
- (b)
- (i) At least one of the hearings required by Subsection (2)(a) shall have a starting time of no earlier than 6 p.m.
  - (ii) The earlier of the hearings required by Subsection (2)(a) shall be no less than seven days after the day the first advertisement required by Subsection (2)(c) is published.
- (c)
- (i) Before holding the public hearings required by Subsection (2)(a), the county shall advertise:

- (A) its intent to adopt a county option sales and use tax;
  - (B) the date, time, and location of each public hearing; and
  - (C) a statement that the purpose of each public hearing is to obtain public comments regarding the proposed tax.
  - (ii) The advertisement shall be published:
    - (A) in a newspaper of general circulation in the county once each week for the two weeks preceding the earlier of the two public hearings; and
    - (B) on the Utah Public Notice Website created in Section 63F-1-701, for two weeks preceding the earlier of the two public hearings.
  - (iii) The advertisement described in Subsection (2)(c)(ii)(A) shall be no less than 1/8 page in size, and the type used shall be no smaller than 18 point and surrounded by a 1/4-inch border.
  - (iv) The advertisement described in Subsection (2)(c)(ii)(A) may not be placed in that portion of the newspaper where legal notices and classified advertisements appear.
  - (v) In accordance with Subsection (2)(c)(ii)(A), whenever possible:
    - (A) the advertisement shall appear in a newspaper that is published at least five days a week, unless the only newspaper in the county is published less than five days a week; and
    - (B) the newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter.
  - (d) The adoption of an ordinance imposing a county option sales and use tax is subject to a local referendum election and shall be conducted as provided in Title 20A, Chapter 7, Part 6, Local Referenda - Procedures.
- (3)
- (a) Subject to Subsection (5), if the aggregate population of the counties imposing a county option sales and use tax under Subsection (1) is less than 75% of the state population, the tax levied under Subsection (1) shall be distributed to the county in which the tax was collected.
  - (b) Subject to Subsection (5), if the aggregate population of the counties imposing a county option sales and use tax under Subsection (1) is greater than or equal to 75% of the state population:
    - (i) 50% of the tax collected under Subsection (1) in each county shall be distributed to the county in which the tax was collected; and
    - (ii) except as provided in Subsection (3)(c), 50% of the tax collected under Subsection (1) in each county shall be distributed proportionately among all counties imposing the tax, based on the total population of each county.
  - (c) Except as provided in Subsection (5), the amount to be distributed annually to a county under Subsection (3)(b)(ii), when combined with the amount distributed to the county under Subsection (3)(b)(i), does not equal at least \$75,000, then:
    - (i) the amount to be distributed annually to that county under Subsection (3)(b)(ii) shall be increased so that, when combined with the amount distributed to the county under Subsection (3)(b)(i), the amount distributed annually to the county is \$75,000; and
    - (ii) the amount to be distributed annually to all other counties under Subsection (3)(b)(ii) shall be reduced proportionately to offset the additional amount distributed under Subsection (3)(c)(i).
  - (d) The commission shall establish rules to implement the distribution of the tax under Subsections (3)(a), (b), and (c).
- (4)

- (a) Except as provided in Subsection (4)(b) or (c), a tax authorized under this part shall be administered, collected, and enforced in accordance with:
  - (i) the same procedures used to administer, collect, and enforce the tax under:
    - (A) Part 1, Tax Collection; or
    - (B) Part 2, Local Sales and Use Tax Act; and
  - (ii) Chapter 1, General Taxation Policies.
- (b) A tax under this part is not subject to Subsections 59-12-205(2) through (7).
- (c)
  - (i) Subject to Subsection (4)(c)(ii), the commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenue the commission collects from a tax under this part.
  - (ii) Notwithstanding Section 59-1-306, the administrative charge described in Subsection (4)(c)(i) shall be calculated by taking a percentage described in Section 59-1-306 of the distribution amounts resulting after:
    - (A) the applicable distribution calculations under Subsection (3) have been made; and
    - (B) the commission retains the amount required by Subsection (5).
- (5)
  - (a) Beginning on July 1, 2009, the commission shall calculate and retain a portion of the sales and use tax collected under this part as provided in this Subsection (5).
  - (b) For a county that imposes a tax under this part, the commission shall calculate a percentage each month by dividing the sales and use tax collected under this part for that month within the boundaries of that county by the total sales and use tax collected under this part for that month within the boundaries of all of the counties that impose a tax under this part.
  - (c) For a county that imposes a tax under this part, the commission shall retain each month an amount equal to the product of:
    - (i) the percentage the commission determines for the month under Subsection (5)(b) for the county; and
    - (ii) \$6,354.
  - (d) The commission shall deposit an amount the commission retains in accordance with this Subsection (5) into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009.
  - (e) An amount the commission deposits into the Qualified Emergency Food Agencies Fund shall be expended as provided in Section 35A-8-1009.
- (6)
  - (a) For purposes of this Subsection (6):
    - (i) "Annexation" means an annexation to a county under Title 17, Chapter 2, County Consolidations and Annexations.
    - (ii) "Annexing area" means an area that is annexed into a county.
  - (b)
    - (i) Except as provided in Subsection (6)(c) or (d), if, on or after July 1, 2004, a county enacts or repeals a tax under this part:
      - (A)
        - (I) the enactment shall take effect as provided in Subsection (1)(c); or
        - (II) the repeal shall take effect on the first day of a calendar quarter; and
      - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (6)(b)(ii) from the county.
    - (ii) The notice described in Subsection (6)(b)(i)(B) shall state:
      - (A) that the county will enact or repeal a tax under this part;

- (B) the statutory authority for the tax described in Subsection (6)(b)(ii)(A);
- (C) the effective date of the tax described in Subsection (6)(b)(ii)(A); and
- (D) if the county enacts the tax described in Subsection (6)(b)(ii)(A), the rate of the tax.

(c)

- (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under Subsection (1), the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.
- (ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under Subsection (1).

(d)

- (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (6)(b)(i) takes effect:
  - (A) on the first day of a calendar quarter; and
  - (B) beginning 60 days after the effective date of the enactment or repeal under Subsection (6)(b)(i).
- (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(e)

- (i) Except as provided in Subsection (6)(f) or (g), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this part for an annexing area, the enactment or repeal shall take effect:
  - (A) on the first day of a calendar quarter; and
  - (B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (6)(e)(ii) from the county that annexes the annexing area.
- (ii) The notice described in Subsection (6)(e)(i)(B) shall state:
  - (A) that the annexation described in Subsection (6)(e)(i) will result in an enactment or repeal of a tax under this part for the annexing area;
  - (B) the statutory authority for the tax described in Subsection (6)(e)(ii)(A);
  - (C) the effective date of the tax described in Subsection (6)(e)(ii)(A); and
  - (D) the rate of the tax described in Subsection (6)(e)(ii)(A).

(f)

- (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under Subsection (1), the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.
- (ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under Subsection (1).

(g)

- (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (6)(e)(i) takes effect:
  - (A) on the first day of a calendar quarter; and
  - (B) beginning 60 days after the effective date of the enactment or repeal under Subsection (6)(e)(i).
- (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

Amended by Chapter 364, 2016 General Session

**59-12-1104 Seller or certified service provider reliance on commission information.**

A seller or certified service provider is not liable for failing to collect a tax at a tax rate imposed under this part if the seller's or certified service provider's failure to collect the tax is as a result of the seller's or certified service provider's reliance on incorrect data provided by the commission in a database created by the commission:

- (1) containing tax rates, boundaries, or local taxing jurisdiction assignments; or
- (2) indicating the taxability of tangible personal property, a product transferred electronically, or a service.

Amended by Chapter 203, 2009 General Session

**59-12-1105 Certified service provider or model 2 seller reliance on commission certified software.**

- (1) Except as provided in Subsection (2) and subject to Subsection (4), a certified service provider or model 2 seller is not liable for failing to collect a tax required under this part if:
  - (a) the certified service provider or model 2 seller relies on software the commission certifies; and
  - (b) the certified service provider's or model 2 seller's failure to collect a tax required under this part is as a result of the seller's or certified service provider's reliance on incorrect data:
    - (i) provided by the commission; or
    - (ii) in the software the commission certifies.
- (2) The relief from liability described in Subsection (1) does not apply if a certified service provider or model 2 seller incorrectly classifies an item or transaction into a product category the commission certifies.
- (3) If the taxability of a product category is incorrectly classified in software the commission certifies, the commission shall:
  - (a) notify a certified service provider or model 2 seller of the incorrect classification of the taxability of a product category in software the commission certifies; and
  - (b) state in the notice required by Subsection (3)(a) that the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the incorrectly classified product category if the certified service provider or model 2 seller fails to correct the taxability of the item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice.
- (4) If a certified service provider or model 2 seller fails to correct the taxability of an item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice described in Subsection (3), the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this part on the item or transaction.

Enacted by Chapter 384, 2008 General Session

**59-12-1106 Purchaser relief from liability.**

- (1)
  - (a) Except as provided in Subsection (1)(b), a purchaser is relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if:
    - (i) the purchaser's seller or certified service provider relies on incorrect data provided by the commission:

- (A) on a tax rate;
- (B) on a boundary;
- (C) on a taxing jurisdiction; or
- (D) in the taxability matrix the commission provides in accordance with the agreement; or
- (ii) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on incorrect data provided by the commission:
  - (A) on a tax rate;
  - (B) on a boundary;
  - (C) on a taxing jurisdiction; or
  - (D) in the taxability matrix the commission provides in accordance with the agreement.
- (b) For purposes of Subsection (1)(a), a purchaser is not relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this part or an underpayment if the purchaser's, the purchaser's seller's, or the purchaser's certified service provider's reliance on incorrect data provided by the commission is as a result of conduct that is:
  - (i) fraudulent;
  - (ii) intentional; or
  - (iii) willful.
- (2) In addition to the relief from a penalty described in Subsection (1), a purchaser is not liable for a tax or interest under Section 59-1-402 for failure to pay a tax due under this part or an underpayment if:
  - (a) the purchaser's seller or certified service provider relies on:
    - (i) incorrect data provided by the commission:
      - (A) on a tax rate;
      - (B) on a boundary; or
      - (C) on a taxing jurisdiction; or
    - (ii) an erroneous classification by the commission:
      - (A) in the taxability matrix the commission provides in accordance with the agreement; and
      - (B) with respect to a term:
        - (I) in the library of definitions; and
        - (II) that is:
          - (Aa) listed as taxable or exempt;
          - (Bb) included in or excluded from "sales price"; or
          - (Cc) included in or excluded from a definition; or
  - (b) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on:
    - (i) incorrect data provided by the commission:
      - (A) on a tax rate;
      - (B) on a boundary; or
      - (C) on a taxing jurisdiction; or
    - (ii) an erroneous classification by the commission:
      - (A) in the taxability matrix the commission provides in accordance with the agreement; and
      - (B) with respect to a term:
        - (I) in the library of definitions; and
        - (II) that is:
          - (Aa) listed as taxable or exempt;
          - (Bb) included in or excluded from "sales price"; or
          - (Cc) included in or excluded from a definition.

Enacted by Chapter 384, 2008 General Session